

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

_____	)	
In re	)	Chapter 7
	)	
BERTHA SMITH,	)	Case No. 12-13831 (FJB)
	)	
Debtor.	)	
_____	)	
BERTHA SMITH.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary Case No. 12-_____ (FJB)
	)	
UNITED STATES DEPARTMENT OF	)	
EDUCATION	)	
	)	
Defendant.	)	
_____	)	

**ADVERSARY COMPLAINT**

Bertha Smith (“Plaintiff”), by and through her attorneys, respectfully brings this Complaint against the United States Department of Education (“Defendant”) and alleges as follows:

**JURISDICTION AND VENUE**

This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

### **NATURE OF ACTION**

1. This is an action brought pursuant to 11 U.S.C. § 523(a)(8) and Rule 4007(b) of the Federal Rules of Bankruptcy Procedure to determine the dischargeability of two student loan debts owing by Plaintiff to the Defendant.

### **THE PARTIES**

2. Plaintiff is a Massachusetts resident living at 601 Arboretum Way, Canton, Massachusetts, 02021.

3. Defendant is a government agency whose mailing address is U.S Department of Education, 400 Maryland Avenue, SW, Washington, D.C., 20202.

### **FACTUAL ALLEGATIONS**

4. Over 10 years ago, Plaintiff took out a student loan (the “First Student Loan”) for her own benefit so that she could attend college at the Computer Processing Institute formerly located in Cambridge, Massachusetts.

5. In 2006, Plaintiff took out a second student loan, a Parent PLUS Loan (the “Second Student Loan,” and together with the First Student Loan, the “Student Loans”), in the amount of \$22,000 for the benefit of her son, Antoine R. Smith, so that he could attend college at Morehouse College in Atlanta, Georgia.

6. In 2008, Plaintiff reconsolidated the First Student Loan.

7. On May 2, 2012, Plaintiff filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code.

8. Two of the unsecured non-priority claims owing by Plaintiff and listed on Schedule F to Plaintiff’s bankruptcy petition are (i) the balance of the First Student Loan owing to Defendant, \$7,423.25, and (ii) the balance of the Second Student Loan, \$31,481.04.

9. The Student Loans are educational loans “made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution” under 11 U.S.C § 523(a)(8)(A).

10. Currently, Plaintiff earns \$2,195.27 per month as a claims reviewer for Partners HealthCare System, Inc. and receives \$412.00 per month in Social Security assistance for Plaintiff’s dependent daughter, age 15, for a total monthly income of \$2,607.27.

11. As indicated on Schedule J to Plaintiff’s bankruptcy petition, Plaintiff incurs monthly expenses of \$3,248.00, which cover only the necessities and maintain a minimal standard of living for herself and her dependent.

12. Thus, before paying any of her debts – including the Student Loans – Plaintiff lives on a \$640.73 monthly deficit for herself and her dependent.

13. Plaintiff has no current or anticipated available income or resources with which to repay the Student Loans, and this financial situation will likely persist for the foreseeable future.

14. Despite this, Plaintiff has made a good faith effort to repay the Student Loans.

15. Under the totality of the circumstances, Plaintiff cannot repay the Student Loans without herself and her dependent suffering an undue hardship.

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WHEREFORE, Plaintiff respectfully requests an order from this Court (i) declaring the Student Loans to be dischargeable under 11 U.S.C. § 523(a)(8) and (ii) granting Plaintiff such other and further relief, at law or equity, to which Plaintiff shows herself justly entitled.

Dated: Boston, Massachusetts  
August 31, 2012

Respectfully submitted,

/s/ Steven T. Hoort

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